

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MICHAEL T. PINES,

Plaintiff and Respondent,

v.

MAX KILLINGSWORTH,

Defendant and Appellant.

D039976

(Super. Ct. No. GIN013956)

APPEAL from a judgment of the Superior Court of San Diego County, Dana M. Sabraw, Judge. Affirmed.

Defendant Max Killingsworth appeals a summary judgment in favor of plaintiff Michael T. Pines on Pines's complaint for breach of contract and other causes of action after Killingsworth failed to pay Pines for legal services. Killingsworth contends: (1) he did not receive written notice of his right to arbitration; and (2) the court should have stayed the proceedings pending arbitration. We affirm the judgment.

PROCEDURAL BACKGROUND

Pines represented Killingsworth in litigation and billed him for more than \$23,000 in fees and costs. In his complaint, Pines alleged he had previously served Killingsworth with notice of the client's right to arbitration. After Killingsworth answered the complaint, Pines moved for summary judgment. The court ordered the parties to mediate the matter, but granted Pines's request to rule on the summary judgment motion before mediation occurred.

In a letter to the trial court, Killingsworth requested a continuance to hire counsel and oppose the summary judgment motion. The court granted the continuance and took the mediation off calendar. Killingsworth did not retain counsel or oppose the summary judgment motion. The court granted summary judgment in favor of Pines.

DISCUSSION

I

For the first time on appeal, and without citation to the record, Killingsworth contends Pines did not serve him with statutory notice of his right to arbitration. We cannot consider facts that were not presented to the trial court and that are not part of the record on appeal. (*Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632; *Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625.) Moreover, if Killingsworth did not receive notice of his right to arbitration, he had the burden of moving for dismissal in the trial court or seeking a stay. (*Aheroni v. Maxwell* (1988) 205 Cal.App.3d 284, 294-295.) By failing to do so, he cannot now complain.

II

Killingsworth contends the court erred in ruling on Pines's summary judgment motion before the parties had the opportunity to mediate the matter. However, Killingsworth cites no authority, nor have we found any, to support the proposition a court may not rule on a summary judgment motion before ordering the parties to mediation. Indeed, the court has inherent power to control all proceedings relating to the litigation before it in order to assure the orderly administration of justice. (*First State Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 324, 335; *Hays v. Superior Court* (1940) 16 Cal.2d 260, 264.)

In light of our disposition, we deny Pines's renewed motion to dismiss the appeal.

DISPOSITION

The judgment is affirmed. Pines is entitled to costs on appeal.

McINTYRE, J.

WE CONCUR:

HUFFMAN, Acting P. J.

HALLER, J.